Darryl Ransom [illegible]40704
P. O. Box 689, (FW-315-Up)
Soledad, California.
Zip. 93960-0689

IN PRO SE

ORIGINAL

FILED
JAN - 7
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re Darryl Ransom,
(Petitioner)

v.

Ben Curry, (Warden) (A)
(Respondent)

Case No. CV 07-04453-PSG (JCR)

TRAVERSE IN REPLY TO RESPONDENTS ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

JUDGE: The Honorable John Charles Rayburn Jr.

///

///

///

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (CONT.)

California Administrative Regulations:

California State Cases:

Darryl Ransom E-40704
P. O. Box 689
Soledad, California.
Zip. 93960-0689

IN PRO SE

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re Darryl Ransom, (Petitioner) v. Ben Curry, (Warden) (A) (Respondent)	Case No. CV 07-04453 PSG (JCR) TRAVERSE IN REPLY TO RESPONDENTS ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF. JUDGE: THE HONARABLE JOHN CHARLES RAYBURN JR.

T R A V E R S E

TO THE HONORABLE JOHN CHARLES RAYBURN JR. UNITED STATES MAGISTRATE JUDGE:

Petitioner Darryl Ransom (hereafter Ransom) respectfully submits this Traverse to the answer filed by respondent on December 13, 2007 and state as follows:

Respondents have failed to set forth sufficient facts or law to show cause why the relief prayed for should not be granted.

1.) Ransom admits for purposes of this action the allegation in paragraph (1) of the answer that he is housed at the Correctional Training Facility at Soledad (C.D.C.R.), and he was convicted in Los Angeles County Superior Court (by Plea Agreement); however, Ransom denies the allegation in paragraph (1) that he is lawfully in custody.

2.) Paragraph (2) of respondent's answer is true.

3.) Ransom admits to the allegation in paragraph (3) that he appeared

before the Board on September 28, 2005, but denies he would pose a threat to the public if released.

4.) Ransom denies the allegation in paragraph (4) of respondent's answer.

5.) Paragraph (5) of respondent's answer is true except for crimes Ransom was not convicted for.

6.) Ransom denies all the allegation in paragraph (6) respondent error by stating Ransom had an anti-social personality disorder. The Psychological report clearly states that Ransom would be below average if released. Ransom is competent and responsible for his behavior. (See respondent's lodgment # 4, Ransom's Exhibit "B", Psychological Report.)

7.) Ransom admits to the allegation in paragraph (7) of respondent answer but denies his positive gains don't out weight the negative and his positive progress is not recent. (See Respondent's Lodgment # 4, Ransom's Superior Court Writ at page 4-6)

8.) Ransom admits to the allegation in paragraph (8) of respondent's answer but denies there is some evidence in the record.

9.) Ransom admits to the allegation in paragraph (9) of respondent answer.

10.) Ransom denies paragraph (10)

11.) Ranson denies the allegation in paragraph (11) of respondent answer and states he has shown that the state court decisions upholding the Board's denial was contrary to, and an unreasonable application of clearly established Federal Law.

12.) Ranson denies the allegation in paragraph (12) of respondent's answer. Respondent's claim that Ransom is not entitled to federal relief and that Ransom does not have federally protected liberty interest is mistaken under **McQuillon v. Duncan**, 306 F.3d 895, 903 (9th Cir. 2003) all California Prisoner's enjoy a liberty interest in parole release.

And **Greenholtz v. Inmate's of Neb. Penal and Corr. Complex**, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed. 2d 668 (1979) is the only methodology and controls parole.

13.) Ransom denies paragraph (13)

14.) Ransom denies paragraph (14) that his Due Process rights was violated.

15.) Ransom denies paragraph (15) he has not received the benefits of his Plea Agreement.

16.) Ransom denies paragraph (16) an evidentiary hearing is necessary and would help resolve the issues in this case.

17.) Except as expressly admitted to Ransom denies each and every allegations of respondent's answer. And re-alleges that his continued confinement is improper and unlawful.

For the reasons stated in this Traverse and Memorandum of Points and Authorities. This court should grant the Petition and order Ransom released from prison.

Date: January 3, 2008

Memorandum of Point and Authorities

ARGUMENT

I.

THE STATE COURT'S DENIAL OF RANSOM'S CLAIMS WAS AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES.

Under the antiterrorism and effective death penalty act (AEDPA), a Federal Court may not grant Habeas relief unless the state court decison challenged is contrary to, or involves an unreasonable application of, clearly established federal law, as determined by the supreme court of the United States. 28 U.S.C. § 2254(d)-(1). AEDPA, limits the source of clearly established federal law to supreme court precedent, including the legal principles that flow from that precedent. **Cooper-Smith v. Palmater**, 397 F.3d 1236, 1242 (9th Ci. 2005).

Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, (1979) established that all that is required by the Due Process clause of the **United States Constitution** of its own force is that an inmate be afforded an opportunity to be heard and when parole is denied that the inmate be informed in what respect he falls short of qualifying for parole. (**Id.** at 16.) However, **Greenholtz**, also established that the language and structure of State Statutes may create liberty interests which are entitled to great federal protection than afforded by the Due Process Clause of its own force. (**Id.** at 12; see also, **Board of Pardons v. Allen**, 482 U.S. 369, 377-378 (1987).

The Ninth Circuit has determined that "[U]nder the 'clearly established' framework of **Greenholtz**, and **Allen**, ... California Parole scheme give rise to a cognizable libery interest in release on parole. **McQuillion v. Duncan**, 306 F.3d 895, 902 (2002). Further, this liberty interest is created, not upon

the grant of a parole date, but upon the incarceration of the inmate." **Biggs v. Terhune**, 334 F.3d 910, 915 (9th Cir. 2003).

Six years after **Greenholtz**, **Superintendent v. Hill**, 472 U.S. 445 (1985), established the "some evidence" rule. The controling United States Supreme Court law in this parole context is now "clearly established" Supreme Court precedent. A parole Board's decision, like a prison disciplinary Board's decision, deprives a prisoner of Due Process if it is not supported by "some evidence" or is "Otherwise arbitrary." (**Id.** at p. 457).

A.

STATE LAW REQUIRES MORE THAN THE FEDERAL CONSTITUTION DOES OF ITS OWN FORCE WITH RESPECT TO PAROLE DECISIONS IN CALIFORNIA

When is a determination by the Board finding a prisoner unsuitable, and a state court's decision upholding that determination, an unreasonable application of clearly established federal law? A decsion by the Board denying parole may be "otherwise arbitary." Even if supported by "some evidence". Although federal law establishes the "some evidence" standard, case law applying the highest state court's decisions informs us of what that evidence may consist and to what it must pertain. If a state court decides the Board's decision denying parole is supported by "some evidence" but disregards evidence that the decision was "otherwise arbitrary," as informed by case law, such application constitutes an unreasonable application under **Greenholtz**, **Allen** and **Hill**, the state court decision must be reversed under the AEDPA and the Petition granted.

In re Dannenberg, (2005) 34 Cal.4th 1061, is often cited in support of the proposition that under that decision California prisoner's have no libery interest and that the commisssion of an offense alone is sufficient to deny parole for as long as the Board wishes. However, **Dannenberg's** holding only addressed the narrow question whether the Board must engage in a

comparative proportionality analysis in setting parole dates pursuant to Penal Code, § 3041, subd. (a), and held that "[N]othing in the statute states or suggests that the Board must evaluate the case under standards of uniformity before exercising its authority to deny a parole date on the grounds the particular offender's criminality presents a continuing public danger." (Id. at 1070.), (underlining emphasis added).

Dannenberg, also explained that California prisoners have "a liberty interest and expectation ... to the extent that state law provides it." (Id. at 1098 n. 18) the extent to which prisoners in California have a liberty interest has previously been discussed by the California Supreme Court. In re Rosenkrantz, (2002) 29 Cal.4th 616, setting forth principles at p. 683. Rosenkrantz, was not overruled. (Dannenberg, 34 Cal.4th at 1094 ["our conclusion does not contravene Rosenkrantz, 29 Cal.4th 616."] Post-Dannenberg, state court's continues to follow Rosenkrantz, one principles was explained by Justice Moreno, in Rosenkrantz, explaining in his separate concurring opinion "[T]here will come a point, which already may have arrived, when petitioner would have become eligible for parole if he had been convicted of first degree murder. Once petitioner reaches that point, it is appropriate to consider whether his offense would still be considered especially egregious for a First Degree Murder in order to promote the parole statute's goal of proportionality between the length of sentence and the seriousness of the offense." (Id. at 690). Justice Moreno, explained that it would be appropriate, at that point, for judicial reappraisal of the Board's decision.

B.

APPLICATION OF THE "OTHERWISE ARBITRARY" PORTION OF THE "SOME EVIDENCE" STANDARD, AND EXTENT OF THE LIBERTY INTEREST.

On June 26, 2006, the Los Angeles Superior Court reappraised and reversed

the Board's decision denying Robert Rosenkrantz parole. (In re Rosenkrantz, Los Angeles Superior Court Case No. (BH003529). The Court of Appeals subsequently refused to stay the decision July 31, 2006, and on August 3, 2006, the California Supreme Court summarily denied the state's Petition for Review. Significantly the Superior Court cited Biggs and Irons v. Warden, (E.D. Cal. 2005) 358 F.Supp.2d 936, as stating the applicable legal principles and standard first stated by Justice Moreno. Thus, the OFT-Cited idea that the commitment offense and past convicted offences alone are sufficient to deny parole forever has been rejected by the California Supreme Court as demonstrated by current state court decisions. In short:

> **"Yet, the predictive value of the commitment offense may be very questionable after a long period of time .. The Governor's assumption that a prisoner may be deemed unsuitable for release on the basis of the commitment offense "alone" is corret, but the proposition must be properly understood. The commitment offense is one of only two factors indicative of unsuitability a prisoner cannot change (the other being his "previous record of violence"). Reliance on such an immutable factor without regard to or consideration of subsequent circumstances may be unfair." In re Scott, (2005) 34 Cal.Rptr.3d 905, 919-92, Quoting Irons v. Warden, (E.D. Cal.2005) 358 F.Supp.2d 936, 947.**

The California Supreme Court has previously advised, "even where the passage of time is not a factor and the assessment is made by an expert, predictions of future dangerousness are exceedingly unreliable." People v. Murtishaw, (1981) 29 Cal.3d 733, 768. Such predictions, then, are exceedingly unreliable and as such, is an unreasonable basis for making a public safety threat assessment. Application of the principle is exemplified by the recent Superior Court decision in Rosenkrantz, a well-known saga ending with the California Supreme Court's denial of review and release of Robert Rosenkrantz. It demonstrates the practical application of the "otherwise arbitrary" portion of the "some evidence" rule and also informs what the extent of the liberty interest is, even in a case such as Rosenkrantz, where the circumstances of the offense were more egregious than the typical second

degree murder, or Ransom's offense. **Rosenkrantz**, bought an uzi, practiced with it, waited outside the victim's house all night and when he came out in the morning, shot him ten times, some five of the shots after the victim lay on the ground mortally wounded, and then bragged about it and posed with the uzi. Given the latest decisions in that case, it is clear that use of the offense as "some evidence" to deny parole has limits, and state court's have agreed with **Biggs** and **Irons**, with respect to the process due.

In another affirmative statement of what state law requires, the California Supreme Court recently remanded a case back to the Court of Appeals with direction to address specific issues. The court of appeals was instructed to vacate its summary denial and to issue an order to show cause why the Governor did not abuse his discretion in reversing the Board's finding that the petitioner was suitable for parole, why "some evidence" in the record supported the determination and why the petitioner was not entitled to release on parole. In that case, as in **Rosenkrantz**, there was evidence of premeditation. **In re Wen Lee**, (2006) 49 Cal.Rptr.3d 931. The Court of Appeals ordering the petitioner released, explained: "[T]he test is not whether "some evidence" support the reasons the Governor cites for denying parole, but whether "some evidence" indicates a parolee's release unreasonably endangers public safety"] (**Id.** at p. 936). (Underlining substituted for original italics emphasis).

Similarly, in yet another case involving particularly egregious circumstances arguably more heinous or atrocious than the facts involved in this present case, the court again explained that continued reliance on aggravating facts of the crime violated due process and no longer amounted to "some evidence" supporting denial of parole. **In re Elkins**, (2006) 50 Cal. Rptr.3d 503, like the Superior Court in **Rosenkrantz**, **Elkins**, cited **Irons v. Warden**, (E.E. Cal. 2005) 358 F.Supp.2d 936. **Irons**, However, was

reversed March 6, 2007, by the Ninth Circuit, Case No. (05-15275), **Irons v. Carey**, ___ F.3d ___ (9th Cir. 2007). Nevertheless, the **Biggs** principles were upheld.

Many Federal Court's have also found **Biggs**, to correctly apply Supreme Court due process principles: **Rosenkrantz v. Marshall**, (C.D. Cal. 2006) 444 F.Supp.2d 1063 ["nobody elected the BPT Commissioner's as sentencing Judges."]; **Martin v. Marshall**, (N.D. Cal. 2006) 431 F.Supp.2d 1038, [The Board has capitulated to the no-parole Policy, denial of parole under California Governor's no parole policy for murderer's denied inmate his due process right to be heard by an impartial decision-maker] (Citing **Coleman v. Board of Prison Terms**, Case No. (96-0783 LKK PAN), (E.D. Cal. 2005); **Sanchez v. Kane**, (C.D. Cal. 2006) 444 F.Supp.d 1049 [The parole satutes do not vest the Governor with the power to re-sentence petitioner].

Some Federal Court's has considered **Sass v. Cal. Bd. of Prison Terms**, 461 F.3d 1123 (9tth Cir. 2006) as "backing away from **Bigg's**", relying on the **Sass**, statement that "under the AEDPA it is not our function to speculate about how future parole hearing could proceed." (**Sass**, 461 F.3d at 1129.) However, as one District Court Judge put it:

> **"The Sass and Biggs decisions are not polar opposites and can be harmonized: The BPT can look at immutable events, such as the nature of the conviction offense and pre-conviction criminality, to predict that the prisoner is not currently suitable for parole (Sass), but the weight to be attributed to those immutable events decreases over time as a predictor of future dangerousness as the years pass and the prisoner demonstrates favorable behavior (Biggs). The one way in which Sass limits Biggs is to put to rest any idea that the commitment offense and pre-offense behavior only support the initial denial of of parole. The immutable events may support the decision to deny parole not just at the first parole consideration hearing but also at subsequent hearings. However, Sass did**

> not dispute the principle that, other things being equal, a murder committed 50 years ago is less probative of a prisoner's current dangerousness than one committed 10 years ago. Not only does the passage of time count for somehing, exemplary behavior and rehabilitation in prison counts for somehing according to Biggs. Superintendent v. Hill's standard might be quite low, but it does require that the decision not be arbitrary, and reliance on only the facts of the crime might eventually make for an arbitrary decision.
>
> Having determined that there is a due process right, and that some evidence is the evidentiary standard for judicial review, the next step is to look to state law to answer the question, 'some evidence of what?" (Jerome Thomas v. Jill Brown, (Warden)), Case No. (05-1332 MHP (N.D. Cal. 2006), pp. 5-6.

In that respect, **Sass**, failed to consider what "some evidence" must demonstrate, and what state law informs. (See **Sass**, Reinhardt, Circuit Judge, dissenting.) It is clear that both state and federal court's agree with **Biggs** and The United State Supreme Court due process principles **Biggs** relied on these are: **Morrissey v. Brewer**, 408 U.S. 471 (1972), **Greenholtz**, **Allen**, **Hill**, and **Lankford v. Idaho**, 500 U.S. 110 (1991) (Quoting **Joint Anti-Fascist Refugee Comm. v. McGrah**, 341 U.S. 123 (1951). As the Supreme court has explained, "rules of law may be sufficiently clear for Habeas purposes even when they are expressed in terms of a generalized standard rather than as a brightline rule." **Williams v. Taylor**, 529 U.S. 362, 382 (2000).

ARGUMENT

II.

RANSOM HAS A PROTECTED LIBERTY INTEREST IN PAROLE UNDER THE DUE PROCESS CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS; THUS, THIS COURT'S REVIEW MUST INCLUDE A DETERMINATION OF RANSOM'S DUE PROCESS RIGHTS.

A.

RANSOM HAS A LIBERTY INTEREST IN PAROLE UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

Ransom contends that this court's review is limited to ensuring "that the procedural requirements imposed by state law are met and that the decision is not arbitrary or capricious in nature." Ransom interprets this to mean the court cannot reexamine the entire record or evidence but, merely decide whether there is "any evidence" in the record that could support the conclusion reached." This overly restrictive interpretation of the standard of review ignores Ransom's federal and state constitutional rights of due process in parole decisions. It also fails to credit the numberous state court decisions clarifying that the "some evidence" test "is not whether some evidence supports the reasons the [Board] cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety." (See **In re Elkins**, (2006) 144 Cal.App.4th 475, 521; **In re Lee**, (2006) 143 Cal.App.4th 1400, 1408; accord **In re Barker**, (May 24, 2007) ___ Cal.App.4th ___ [2007 WL 1502277]; **In re Gray**, (May 24, 2007) ___ Cal.App.4th ___ [2007 WL 1502288]; **In re Lawrence**, (May 22, 2007) ___ Cal.App.4th ___ [2007 WL 1475283]).

The Due Process Clause of the **Fourteenth** Amendment prohibits state action that deprives a person of life, liberty, or property without due process of law. (**U.S. Constitution 14th** Amendment.) A person alleging a due process violation must first demonstrate that he or she was deprived of a liberty or property interest protected by the due process clause and then show that the procedures attendant upon the deprivation were not constitutionally sufficient. (**Kentucky Dept. of Corrections v. Thompson**, (1989) 490 U.S. 454, 459-460; **McQuillion v. Duncan**, (9th Cir. 2002) 306 F.3d 895, 900). The United States Supreme Court recognizes a federal due process liberty in parole.

(Greenholtz v. Inmates of Nebraska Penal Complex, (1979) 442 U.S. 1, 7.) The court held in 1979 and reaffirmed in 1987 that "a states statutory scheme, if it uses mandatory language create a presumption that parole release will be granted when or unless certain designated findings are made, and thereby give rise to a constitutional liberty interest." (Board of Pardons v. Allen, (1987) 482 U.S. 369, 373: Greenholtz, supra, 442 U.S. at p. 7).

Ransom acknowledges "[T]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." Greenholtz, supra. 442 U.S. at p. 7. However, "a state's statutory scheme, if it uses mandatory language 'creates a presumption that parole release will be granted' when or unless certain designated findings are made and thereby gives rise to a constitutional liberty interest." Allen, 482 U.S. at pp. 377-78; Greenholtz, supra, 442 U.S. at p. 12). The state statutory Provision governing parole hearings provides in pertinent part:

> **"That the panel or Board, sitting en banc. shall set a release date unless it determines that the gravity of the current convicted offense or offenses ... is such that consideration of the public safety requires a more lengthy period of incarceration for this individual and that a parole date, therefore, cannot be fixed ..." (Penal Code, section § 3041 subd. (b)).**

The Legislature's use of the words "Shall" and "Unless" makes the provisions mandatory, thus conferring a liberty interest in parole hearings. (See Allen, supra, 482 U.S. at p. 376; Greenholtz, supra, 442 U.S. at p. 11; Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 914-915). Consequently, this court's review includes ensuring compliance with Ransom's due process rights under the federal constitution.

B.

RANSOM HAS A PROTECTED LIBERTY INTEREST UNDER THE DUE PROCESS CLAUSE OF THE CALIFORNIA CONSTITUTION WHICH IS PROTECTED UNDER THE "SOME EVIDENCE" STANDARD OF REVIEW.

In addition to a cognizable liberty interest in release on parole under the due process clause of the **United States Constitution**, an inmate's liberty interest in parole is likewise protected under the broader due process guarantees of the **California Constitution** (**Cal. Const.**, Art. 1, §§ 7. subd. (a) is: **People v. Ramirez**, (1979) 25 Cal.3d 260, 266-269). The California Supreme Court long ago recognized that freedom from arbitrary adjudicatives procedures is a substantive component of an individual's liberty interests. (**People v. Ramirez**, 25 Cal.3d at pp. 266, 269). In criticizing and rejecting the restrictive federal aproach, which conditions due process protections on statutorily created entitlements of liberty or property, our high court in **Ramirez**, held "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity. (**Ibid.**) "Accordingly, the **California Constitution** recognizes a substantive and procedural due process interest in parole. (**In re Rosenkrantz**, (2002) 29 Cal.4th 616, 676-677; **People v. Ramirez**, supra, 25 Cal.3d at p. 260; **In re Powell**, (1988) 45 Cal.3d 894, 904.

Before an inmate may receive a parole date, the Board must find the inmate suitable for parole. (**Penal Code**, § 3041; **Cal. Code of Regs. Tit. 15** §§ 2401, 2402). As with the parole hearing generally, the Board's parole finding must comply with the requirements of constitutional due process. (**In re Rosenkrantz**, supra, 29 Cal.4th at p. 655.) Due Process is satisfied if the Board's assessment of the inmate's current risk of danger to the public if released on parole is supported by "some evidence" in the record. (**In re Dannenberg**, (2005) 34 Cal.4th 1061, 1091; see **Pen. Code**, § 3041 subd. (b)) Thus, the California Supreme Court developed the "some evidence" rule to protect an inmate's state based rights of due proecess. (**In re Dannenberg**, 34 Cal.4th at p. 1091; **In re Rosenkrantz**, supra, 29 Cal.4th at pp. 676-677.

The "some evidence" standard comes from the United States Supreme Court's decision in **Superintendent Massachusetts Correctional Institution Walpole v. Hill**, (1985) 472 U.S. 445, wherein the high court address judicial review of a prison disciplinary proceding. In balancing the prisoner's due process right to a decision that is neither arbitrary nor capricious against the institutions interest in running a safe prison, the court concluded that due process minimally requires that the disciplinary Board's finding be supported by "some evidence" in the record. (**Id.** at p. 454). Two years after the United States Supreme Court established the "some evidence" standard.

The California Supreme Court imported the standard into parole Board decisions rescinding grants of parole. **In re Powell**, supra, 45 Cal.3d 894, our high court held for the first time that parole decisions must comport with due proces, and that due pocess is met if there is "some evidence" in the record" supporting the decision. (**Id**, at p. 904).

In 2002, the California Supreme Court applied the "some evidnece " standard to parole suitability hearings in **In re Rosenkrantz**, supra, 29 Cal.4th 616. The state high court began by acknowledging the Board's broad discretion in rendering parole suitability decisions and that appellate courts cannot apply a de novo standard of review to such decisions (**Id**, at p. 679; **In re Dannenberg**, 34 Cal.4th at p. 1082). While acknowledging this deferential standard of review the **Rosenkrantz**, court admonished that judicial review of Board decision is not merely Pro Forma. In reviewing a Board's decision that an inmate is unsuitable for parole. "The Judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law." (**In re Rosenkrantz**, supra, 29 Cal.4th at p. 658). The decsion comports with due process if there is "some evidence" in the record before the Board supports the decision to deny parole, based on the

factors specified by statute and regulations (Id., at p. 658).

Court's also must ensure that the evidence relied on by the Board in meeting the "some evidence" standard is both reliable and of a solid value. (Id., at p. 655; see Cal. Code of Regs., Tit. 15 §§ 2402, subd. (b), 2281 subd. (b); see also In re Scott, (2005) 133 Cal.4th 573, 591). It is not sufficient for the Board derive finding from a silent or misconstued record. Reviewing court's additionally must determine if the Board gave the inmate "individualized consideration of all relevant factors' and that the Board's conclusions was neither arbitrary nor capricious. In re Rosenkrantz, supra 29 Cal.4th at p. 655; In re DeLuna, (2005) 126 Cal.App.4th 585; see U.S. Const. 5th, 14th Amendments; Cal. Const. Article I, § 7. subd. (a)).

The applicable statutes and regulations provide six non-exclusive circumstances tending to show parole unsuitability and nine circumstances tending to show suitability. (Cal. Code of Regs, Tit. 15 § 2402, subd. (c), (d); In re Rosenkrantz, supra, 29 Cal.4th at pp. 653, 654; In re Scott, (2004) 119 Cal.App.4th 871, 888, 897). The Circumstances Tending to Show Unsuitability include:

> (c) Circumstances tending to show unsuitability. The following circumstances each tend to indicate unsutability for release. These circumstances are set forth as general guidelines. The importance attached to any circumstance or combination of circumstances in a particular case is left to the judgement of the panel.
>
> (1) The Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
>
> (A) Multiple victims were attacked injured or killed in the same or separate incidents.
> (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
> (C) The victim was abused, defied or mutilated during or after the offense.
> (D) The offense was carried out in a manner

which demonstrates an exceptionally callous disregard for human suffering.

(D) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence: The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim. Particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History: The prisoner has a histoy unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses: The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors: The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior: The prisoner has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., Tit. 15, § 2402, subd. (c); In re Rosendrantz, supra, 29 Cal.4th at pp. 653-654).

The Circumstances Tending to Show Parole Suitability include:

(d) Circumstances tending to show suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set fourth as general guidelines. The importance attached to any circumstances or combination of circumstances in a particular case is left to the judgment of the panel.

(1) No Juvenile Record: The prisoner does not have a record of assaulting others as a juvenile or commiting crimes with a potential of personal harm to victims.

(2) Stable Social Hisory: The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse: The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the vicim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for crime: The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Battered Woman Syndrome: At the time of the commission of the crime, the prisoner suffered from battered women syndrone, as defined in section § 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History: The prisoner lacks any significant history of violent crimes.
(7) Age: The prisoner's present age reduces the probability of recidivism.
(8) Understanding and plans for the future: The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.
(9) Institutional Behavior: Institutional activities indicate an enhanced ability to function within the law upon release.

(Cal. Code of Regs, Tit. 15, § 2402, subd. (b); In re Rosenkrantz, supra, 29 Cal.4th at pp. 653-654).

Circumstances (1),(2), and (4) reasonably reflect the sole specified and authorized statutory exception to Penal Code, § 3041(a) to setting parole release dates. The current or past conviction offense. Factor (E) of circumstance (1) however, pertaining to the motive for the crime being inexplicable and trivial, although typically stated by the Board as a factor for denying parole, is a rare circumstance, as there is almost always, as here an explanation as to why the offense occurred. Whether the motive was trivial is another matter, as one court noted:

> "The epistemological and ethical problems involved in ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated "[hardly] any part of Penal Law is more settled than that motive is irrelevant. (Hall, General Principles of Criminal Law (2d Ed. 1960) at p. 88; see also Husak, Motive and Criminal Liability (1989) Vol. 8, No. 1. Crim. Justice Ethics 3)."

The Court further explained:

> "The offense committed by most prisoners serving life sentences is, of course murder. Given the high value our society places upon life, there is is no motive for unlawfully taking the life of another human being that could not be deemed "Trivial." The legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "Normally" be given release dates when they approach their minimum eleigible release date. (Penal Code, § 3041, subd. (a): In re Scott, 119 Cal.4th 871, 892-893).

It is therefore questionable whether the factor has any evidentiary value in the case, if the motive was indeed inexplicable "A person whose motive for a criminal act that cannot be explained or is unintelligible is therefore unusally and unpredictable and dangerous." Such is not the case here. The Board's decision on this ground was arbitrary and capricious.

The uncontroverted facts of the commitment offense are that Ransom went to the house of Artur Chappell to settle a difference and to retrieve his drugs. Which were under the ice box. Ransom dropped the aluminum bottom to the ice box awaking Mr. Chappell, who startled Ransom and in fear Ransom fired one shot killing Mr. Chappell instantly.

There is no evidence in the record that this "offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering" or the offense was "inexplicable" and "very trivial."

The primary circumstances and factors considered to make the unsuitable determination (**Cal. Code of Regs., Tit. 15**, § 2402(c)-(1)-(B)-(D) and (E)) have been explained by the court's. To qualify for the authorized exception in **Penal Code**, § 3041(b) the offense must be "exceptionally egregious." The Court of Appeals explained and characterized this as follows:

> "**In re Van Houten**, (2004) 116 Cal.App.4th 339 [10 Cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in this case was involved in multiple stabbings of a woman with a knife and bayonet. While she was dying. The victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court. '[T]hese acts of cruelty far exceed the minimum necessary to stab a victim to death.' (**Id.**, at p. 351). Other examples of aggravated conduct reflecting an 'exceptionally callous disregard for human suffering.' Are set forth in the Board's regulations relating to the matrix used to set base terms for

> life prisoners (§ 2402, subd. (b); § 2282, subd. (b): namely "Torture." As where the "[V]ictim was subjected to prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death." And "severe trauma." As where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim." (**In re Scott,**(2004) 119 Cal.App.4th 871, 891).

As in **Scott**, "No such facts or anything remotely similar are present in Ransom's case. To permit Ransom's motive to be used to deny him parole, makes a mockery of the Legislative declaration that life prisoenr's are "normally" entitled to receive a release date shortly before they first become eligible for parole. (**Penal Code,** § 3041(a)).To allow this denial to stand on these unsupported factors is a violation of Ransom's due process rights and his liberty interest in parole.

Circumstance (3) of the unsuitability factors (**Cal. Code of Regs., Tit. 15** § 2402(c)-(3) "Unstable Social History." is inapplicable here, where Ransom has demonstrated stable relationships with others since incarceration, nor is there a nexus between any pre-convicted history and a current threat to public safety in this case. Furthermore, there is no reliable evidence showing Ransom "had a history of unstable or tumultuous relationships with others."

Circumstance (5) of the unsuitability factors "Psychological Factors." The prisoner has a lengthy history of severe mental problems related to the offense, is not applicable in this case as the psychological evaluation report indicates, as do previous reports by different mental health experts and recent reports, none of whom have recommended that Ransom participate in or need "Therapy" (**Cal. Code of Regs., Tit. 15** § 2402(c)-(5).

Circumstance (6) of the unsuitability factors "Institutional Behavior." The prisoner has engaged in serious misconduct in prison or jail. While it may be reasonable to deny credit pursuant to (**Cal. Code of Regs, Tit. 15** § 2410). While providing for the granting or denial of "Post-Conviction Credits." To

indeterminately sentenced prisoners. This factor should not be used as a substitute for a statutory provision which specifies "only" the gravity of the current or a past conviction offense as grounds for withholding setting of parole terms.

It is a rare prisoner that does not incur at least one "Serious Rule Violation CDC-Form-115" (SRV) in the course of serving ten or more years. The question should be whether the (SRV) is of such magnitude that it reasonably supports a conclusion that a prisoner therefore poses an unreasonable threat to public safety. If the controlling statute specifies only the gravity of a past or present convicted offense, and the regulations provide sanctions for (SRV), Ransom submits that denial of parole for any (SRV) is insufficient and it does not show that Ransom presents a current threat to public safety if released from prison after serving (23) years in prison. Simply identifying "some evidence" in the record to support each result cannot shield the Board from invocation of the some evidence standard. (Cal. Code of Regs., Tit. 15 § 2402(c)-(6).

Penal Code, section § 3041, subd. (b) specifically provides that the Board set prisoners terms at their initial parole consideration hearing:

> "Unless it determines that the gravity of the current convicted offense or the timing and gravity of current or past convicted offense or offenses, is such that consideration of public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore cannot be fixed at this meeting."

The statute does not authorize denial of parole for any other reason. Ransom, however, was denied parole because of "Serious Rule Violation Misconduct" years in the past; in addition to the offense and prior conduct. It has previously been explained that evidence given is support of the determiantion that a prisoner's release unreasonably endangers public safety must also have an "indicia of reliability." Jancsek v. Estelle, 974 F.2d 1132, 1134 (9th Cir. 1992). The Court in (In re Morrall, (2002) 125 Cal.Rptr.2d 391: "To constitute 'some evidence' the information relied upon by the Governor must tend logically, and by reasonable

inference, to establish a fact relevant to the inmate's suitability for parole." (Id., at p. 407) In re Scott, (2005) 34 Cal.Rptr. 905, explained that the predictive value of the commitment offense may be very questionable after a long period of time. (Id., at P. 920). This is no less true for serious rule violation misconduct years in the past. It is also unreasonable to substitute a rule violation, especially one not involving violence, for the statutorily authorized reason, to deny parole. All prisoner's should receive similar punishment for similar rule violations. The Board Abused its Discretion by denying parole repeatedly for which misconduct other prisoners only suffer the loss of a few months of credits: which can be restored after six-months of disciplinary-free conduct. In effect, the Board has denied parole repeatedly because Ransom was not instantaneously rehabilitated by and upon incarceration.

One court stated: "With respect to petitioner's disciplinary violations, there is significant evidence in the record of petitioner's positive institutional behavior which reasonably mitigates the effect that petitioner's past violations have on his suitability. Martin v. Marshall, (N.D. Cal. 2006) 431 F.Supp.2d 1038. The prisoner had (20) disciplinary rule violation reports, including for possession of drugs, weapons materials, and gambling paraphernalia. He had also been stabbed three times between 1987 and 1990 for involvement with loan sharks. However, Martin, had not received any since 1995. Ransom has been disciplinary free since 1995. The disciplinary rule violation the Board relied on in Ransom case or (12) years in the past. This disciplinary rule violations from Ransom's past does not show that he is currently dangerous to society to prevent the setting of a parole date.

Evidence of Ransom's positive institutional behavior, are as follows and contradicts the Board claims that Ransom's gains are recent:

(1991) successfully completed (A.B.E.-II) Adult Basic Education.

(1992) successfully completed and attained my "GED".

(1992) Certificate received for achievement in the Juvenile Diversion Program.

(1993) successfully completed Training in Milk Processing and was issued a California Pasterizer General Licence.

(1993) certificate of achievement for Narcotics Anonymous.

(1994) successfully completed the "12-Steps on Narcotic Anonymous and continued to participate to the present.

(1994) successfully completed "Literacy Life Skills Self-Help Program."

(1995) issued a Chrono from Supervisor in Milk Processing Training.

(1996) issued a Chrono from Supervisor in Milk Processing Training.

(1996) sucessfully completed "Literacy Life Skills Self-Help Program."

(1996) participated in the Corcoran Prison Basketball Tournament Championship (2nd Place).

(1996) certificate received for participation in the Path of Peace, a twelve step recovery program for problems associated with addictions.

(1997) successfully completed "Orientation Shop and Safety for Electronics and Computer Repair Program."

(1997) successfuly completed the Parent Education Program.

(1998) successfully completed "Friends outside Parenting Class."

(1998) issued a Certificate for perfect attendance for the "Parenting Class."

(1998) successfully completed "The Entrepreneur Development Program."

(1998) issued a Chrono / Letter from the instructor of the "Entrepreneur Development Program."

(1998) certificate received for completion of the Century 21 Real Estate course, No. (KG-525).

(1998) successfully participated in the Principles of Alcoholics Anonymous and Narcotics Anonymous Program.

(1998) successfully completed a (20-week) college level Executive Business Administration course: consisting of the Principles of Management, Marketing, Accounting, Financing, Decision Making, and Human Resources, certificate rece.

(1999) Correctional Counselor (CC-I), issued and placed a Chrono in my Central File (C-File) stating that the (C.D.C.R.) no longer considers Ransom an "Active Gang Member".

(1999) successfully participated in Narcotic Anonymous.

(2000) successfully completed the Peer Education Program for instruction in "Tuberculosis Prevention ."

(2000) successfully completed the Peer Education Program for instruction in "Hepatitis Prevention."

(2000) successfully completed the Peer Education Program for instruction in "Sexually Transmitted Diseases and Prevention."

(2000) successfully completed the Peer Education Program for instruction in "HIV-Aids Prevention."

(2000) successfully participated in Narcotic Anonymous.

(2001) Completed in the William James & Association "Art Competion."

(2001) successfully completed "M.O.T.M.-Meeting of the minds Program."

(2001) participated in the Soledad Prison Basketball Tournament Chsampionship 3-on-3 (2nd Place).

(2001) successfully completed a course in the cause, prevention, treatment and management of Hepatitis. Certificate received No. (C-1944).

(2001) successfully completed a course in the cause, prevention, treatment and management of Sexually Transmitted Disease. Certificate received No. (C-1883).

(2002) successfully completed a course in the cause, prevention, treatment and management of HIV/AIDS. Certificate received No. (C-2008).

(2002) successfully participated in Narcotic Anonymous.

(2002) successfully completed Anger Management course.

(2002) certificate received for completion of the Vocational Graphic Arts/ Offset Printing.

(2002) certificate of completion of the Amity Foundation of California subjects included: Domestic Violence, Substance Abuse related behavior, Family Cycles and Violence, and identifying messages received from the family.

(2002) certificate of completion of the Amity Foundation East Lodge.

(2003) successfully completed the Emergency Management Program with FEMA for "Decision Making & Problem Solving."

(2003) successfully completed the Emergency Managemet Program with FEMA for "Effective Communication."

(2003) successfully completed the Emergency Management Program with FEMA for "A Citizen's Guide to Disaster Assistance."

(2003) successfully completed the Emergency Management Program with FEMA, for "Building for the Earthquakes of tomorrow."

(2003) successfully completed the Emergency Management Program with FEMA, for "Animals in Disaster: Awareness and Preparedness."

(2003) successfully completed the Emergency Management Program with FEMA, for "Animals in Disaster: Community Planning."

(2003) received a positive Laudatory Chrono from Correctional Staff stating that Ransom has consistently been exceptional with positive work ethics, and has encourge and helped others to refrain from associations or involvement in activities that could contribute to creating a negative prison environment. In addition, he has displayed a positive role model for younger inmates.

(2003) successfully trained on the proper operation of the Upright, Model U133, Hydraulic Lift. This included assembly, operation, disassembly, and safety features of the unit.

(2003) successfully completed a series of lectures entitled: How to become a Father, and not to get angry. Certificate received.

(2003) successfully participated in Narcotic Anonymous.

(2003) Certificate received for completion of the Parent Education Program, No. (BA-264).

(2004) successfully completed the Emergency Management Program with FEMA, for "Emergency Program Manager."

(2004) successfully completed the Emergency Management Program with FEMA, for "Emergency Preparedness U.S.A.."

(2004) successfully completed the Emergency Management Program with FEMA, for "Retrofitting Floor Prone Residential Structures."

(2004) successfully completed the Emergency Management Program with FEMA, for "Mitigation for Homeowners."

(2004) successfully completed the Emergency Management Program with FEMA, for "Introduction into Mitigation."

(2004) successfully completed the Emergency Management Program with FEMA, for "Incident Command System."

(2004) successfuly completed the Emergency Management Program with FEMA, for "Livestock in Disasters."

(2004) successfully completed Dr. Thomas Gordon's Family effectivenes Train / Harmony in the Home Program.

(2006) successfully completed Alternative to Violence Project (AVP).

(2006) successfully completed Balanced Re-Entry Activity Group (BRAG).

(2006) still an active member of Narcotics Anonymous

(2006) successfully completed Training in Haircutting safety and sanitation procedures.

(2007) successfully completed the Peer Education Program for instruction in "HIV-AID Prevention."

(2007) successfully completed the Emergency Management Program with FEMA, for "Introduction to Residential Contruction."

(2007) successfully completed the Emergency Management Program with FEMA, for "Principle of Emergency Management."

(2007) successfully completed the Emergency Management Program with FEMA, for "Role of voluntary agencies in Emergency Management."

(2007) successfully completed the Emergency Managemnet Program with FEMA, for "Developing and Managing Volunteers."

(2007) successfully completed the Emergency Management Program with FEMA, for "Hazardous Material for Medical Personnel."

(2007) successfully completed the Emergency Management Program with FEMA, for "Role of the Emergency Operation Center in Community Preparedness, Response and Recovery."

(2007) successfully completed the Emergency Management Program with FEMA, for "Exercise Design."

(2007) successfully completed the Emergency Management Program with FEMA, for "An Orientation to Community Disaster Exercises."

(2007) successfully completed the Emergency Management Program with FEMA, for "An Introduction to Hazardous Materials."

(2007) successfully completed the Emergency Management Program with FEMA, for "Radiological Emergency Management."

(2007) successfully completed the Emergency Management Program with FEMA, for "State Disaster Management."

(2007) successfully completed the Emergency Management Program with FEMA, for "Emergency Planning." Training as a Welder, Maintenance Engineer, Laboratory Technician, Textile Manufactuer, Clerk, Culinary Cook, Porter, Barber, Computer Repairer and Quality Control (Milk Processing); (see the Original Habeas Corpus at P. 4-6). (Respondent's Lodgment # 5, Writ of Habeas Corpus).

ARGUMENT

III.

THE BOARD'S PAROLE DENIAL IGNORED THE FACTORS DEMONSTRATING RANSOM'S "SUITABILITY" FOR PAROLE.

All relevant, reliable information available to the Panel shall be considered in determining suitability for parole. (Cal. Code of Regs., Tit. 15 § 2402, subd. (d)

emphasis added) The Board ignored the findings of the Psychological Evaluation regarding Ransom's violence potential and no need for therapy. The Board's failure to consider such information available to it thus violates, this section. The Board also failed to find that several other factors favored suitability as required by subdivision (d) of section § 2402. Ransom had a stable social history, Ransom continues to enjoy strong family support and community support.

Ransom has shown consistent, genuine signs of remorse for his crimes, for the victim and for both the victim's family and Ransom's own family (Cal.Code of Regs., Tit. 15, § 2402(d)-(3).

The crime was committed at an extremely young age of (23) over (23) years ago. Ransom is now (48) years old and has matured considerably. (Cal. Code f Regs., Tit 15, § 2402(d)-(7). Ransom has made very realistic Parole Plans for release. Ransom has a place to live and several Job offer's and additional assistance from family and friends. (Cal. Code of Regs., Tit. 15 § 2402(d)-(8); see Respondent's Lodgment # 4, and Ransom's Exhibit "C", Letter's of Support for his release to the Community. Lastly, Ransom's institutional activities (i.e., Ransom's substantial participation in Self-Help Programming and development of Marketable Skills), clearly indicates an enhanced ability to function within the law upon release. (Cal. Code of Regs., Tit. 15 § 2402(d)-(9).

In Ramirez, supra, 94 Cal.App.4th 549, as in this case, the Board denied a parole release date on the basis of a finding that the nature of the inmate's offense displayed a callous disregard for huamn suffering. (Id. at pp. 558, 568). Setting aside that determination , the court agreed that "The gravity of the commitment offense or offenses alone may be a sufficient basis for denying a parole date, so long as the Board does not fail to consider all relevant factors." (Id., at p. 569). It is clear, that the Board failed to consider all relevant factors of their own regulations (§ 2402, subd. (d))

Did Ransom gratuitously increased or unnecessarily polonged his victim pain and suffering? "No", are the facts of the crime some evidence that Ransom, acted with exceptionally or especially callous disregard for his victim suffering: or do the facts distinguish Ransom's crime from other second degree murderer's exceptionally or especially callous and cruel? The relevant evidence shows no more cruelty or callous disregard for human suffering than is shown by most second degree murder offense. The Board's use of this factor to conclude that Ransom committed his offense "in an exceptionally callous disregard for human suffering" and was "inexplicable" or "very trivial.", is arbitrary and capricious and without evidence to support that conclusion in light of the facts presented. The California Legislature has clearly expressed its intent that when murders - who are the great majority of inmate's serving indeterminate sentences approach their minimum eligible parole date the Board "shall normally" set a parole release date. (**Penal Code**, section § 3041, subd. (a).

ARGUMENT

IV.

NO EVIDENCE SUPPORTS THE BOARD'S CONCLUSION THAT RANSOM POSES A "CURRENT UNREASOANBLE" THREAT TO PUBLIC SAFETY.

While the offense alone may initially be sufficient to justify denial of parole where "particularly egregious" circumstances are involved, the circumstances involved in this case "were more common place than egregious."

The Federal Courts have expressed grave concern of the potential for due process violations in applying the "some evidence" standard to immutable parole factors. In the landmark decision of **Biggs v. Terhune**, supra, 334 F.3d at p. 917). The defendant in **Biggs**, was convicted of murdering a potential witness in an unrelated criminal case. He and his co-conspirators deceived the victim into thinking they were taking him out of state, then bludgoning him to death (Id. at P. 916).

Although **Biggs**, was a model inmate in Prison, he was found unsuitable for parole based on the hideous character of the commitment offense. (**Ibid**) Although upholding the denial of parole. The Ninth Circuit made it inmistakably clear that it would not tolerate repeated parole denials on factors the inmate could not change. The court expressly found that inmates have a due process liberty interest in parole, and that this interest is infringed by repeated denials based on immutable factors. (**Id.**, at pp. 914-915 [citing **Allen**, supra 482 U.S. at p. 373: **Greenholtz**, supra, 442 U.S. at pp. &, 11-12.) In the words of the courts:

> "We must be ever cognizant that due process is not a mechanical instrucment. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the constitution entrusted with the unfolding of the process. A continued relieance in the future on an unchanging factor, the circumstance of the offense and conduct prior to imprisonment, runs contary to the rehabilitative goals exposed by the prison system and could result in a due process violation (**Biggs v. Terhune**, supra, 334 F.3d at pp. 916-917).

Adopting the **Biggs**, reasoning, the federal district court, Central District of California, reversed the parole unsuitability finding in the **Rosenkrantz** case and ordered Mr. **Rosenkrantz**, was convicted of murdering the friend of his younger brother who had revealed Mr. **Rosenkrantz's** homosexuality. Over his nearly twenty years of incarceration, he was a model inmate whom all agreed had reformed himself. The District Court found that the Board's repeated parole denials based on the gravity of the commitment offense amounted to a denial of due process. (**Id.**, at p. 1070) The Court reasoned in pertinent Parts:

> "While relying upon petitioner's crime as an indicator of his dangerousness may be reasonable for some period of time, in this case, continued reliance on such unchanging circumsances — after nearly two decades of incarceration and half a dozen parole suitability hearings - violates due process because petitioner's commitment offese has become such an unreliable predictions of his present and future dangerousness that it does not satisfy the 'some evidence' standard. After nearly twenty years of rehabilitation the

> ability to predict a prisoner's future dangerousness based simply on the circumstnaces of his or her crime is nil ... Furthermore, the general unreliability of predicting violence is exacerbated in this case by several facts, including petitioner's young age at the time of the offense, the passage of nearly twenty years since that offense was committed, and the fact that all of the evidnece in the record clearly indicates that petitioner is suitable for parole. (**Id.**, at pp. 1084-1085)."

Another instructive case is **Irons v. Warden of California State Prison-Solano**, (E. D. Cal. 2005) 358 F.Supp.2d 936. In **Irons**, the defendant was serving 17-Years-To-Life after a first degree murder conviction arising from his killing a fellow tenant following a verbal altercation. The defendant loaded a handgun, went to the victim's room, fired (12) rounds into him, said he going to let him bleed to death and when the victim complained of the pain, took out a buck knife and stabbed him in the back. (**Id**, at pp. 940-941). The Board found him unsuitable for parole at this fifth parole hearing (**Id**, at p. 939). It did so based on the facts of the commitment offense and the defendant's substance abuse at the time of the murder. (**Id.**, at pp. (39-947). Like the Central District in **Rosenkrantz** the Eastern District in **Irons**, took to heart the **Biggs**, admonition that continued reliance on unchangable factors raises a due process violation. The court admonished that the continuous reliance on unchanging circumstances:

> "[T]ransformed an offense for which California Law provides eligibility for parole into a de facto life imprisonment without the possibility of parole ..... The circumstnaces of the crimes will always be what they were, and petitioner's motive for commiting them will always be trivial. Petitioner has no hope for ever obtaining Parole except perhaps that a panel in the future will arbitrarily hold that the circumstances were not that serious or the motive was more than trivial."

The court aptly reasoned, "to a point, it is true [That] the circumstances of the crime and motivation for it may indicate a petitiioner's unstabiltiy, cruelty, impulsiveness, violent tendencies and the like. However, after fifteen or so years

in the caldron of prison life, not exactly an ideal therapeutic environment to say the least, and after repeated demonstrations that despite the recognized hardships of prison, this petitioner does not possess those attributes, the predictive ability of the circumstances of the criems is near zero" (**Irons**, supra, 358 F.Supp.2d at p. 947 fn. 2). **Irons**, however, was reversed March 6, 2007 by the Ninth Circuit case No. (05-15275); **Irons v. Carey** ___ F.3d ___ (9th Cir. 2007). Nevertheless, the **Biggs**" principles were upheld.

The rule to be drawn was a consideration of these cases is that the "some evidence" rule requires more than a mere modicum of evidence supporting the Board's ultimate decision to deny parole. Due Process requires that a decision to deny parole be supported by "some evidence" the inmate's release unreasonably endangers public safety because he's a current threat.

ARGUMENT

V.

THE BOARD'S REFUSAL TO RELEASE RANSOM ON PAROLE IS AN UNLAWFUL, UNGUIDED ABUSE OF IT'S DISCRETION.

The trial court does not fix the period of confinemnt for prisoners convicted of murder and sentenced to prison for a certain minimum term (e.g. 15-years-to-life) with the possibility of parole. (See **Penal Code**, § 190(a) and § 1168, subd. (b)) Instead, the Board is authorized to determine whether and when such prisoners are released from prison. (**Penal Code**, § 3040). In order to prevent the unguided abuse of discretion condemned by the California Supreme Court in **In re Rodriguez**, (1975) 14 Cal.3d 639. The Board developed guidelines for setting terms of imprisonment for specific crimes. These guidelines are commonly referred to as the "Matrix." See (**Cal. Code of Regs., Tit. 15** § 2403, subd. (c)) **Rodriguez**, held unconstitutional the parole authority's practice of setting the terms of indeterminately sentenced prisoners at the maximum, which was life. Holding that its obligation to "assure that

the indeterminate sentence law is properly adminstered .. is not limited to consideration of procedural due process alone." The court found that the petitioner's life sentence was excessive and disproportionate and order him released from custody. (Rodriguez, at pp. 649, 650). Thereafter, the parole Board adopted the Matrix to guide the commissioner's discretion when seting terms. (**Cal. Code of Regs., Tit. 15** § 2403).

Under the Matrix, Ransom's base term of confinment should be set at roughly (19) years see (**Cal. Code of Regs, Tit. 15**, § 2403, subd. (c)-(III)-(B), [18,19 and 20 years where prisoner directly killed the victim with whom he had no prior relationship].) At the time of the 2005 Parole Hearing, Ransom had served (22) actual years in prison. Had the Board properly granted Ransom parole and credited Ransom with the customary four (4) months of credits toward his sentence for each year he actually served. Ransom would earn an additional (88) months, or seven (7) years and four (4) months. Ransom total period of incarceration at that point would have been (29) years and four (4) months, well beyond the (18, 19 and 20 years) established by the matrix.

The Board has not advanced any reason, nor is there one in the record for exceeding the matrix in this case. Since the matrix takes into account the circumstances of the commitment offense in setting the Base Term, there is no basis for setting the term beyond that provided by the matrix unless the crime was especially heinous or particularly egregious; which this case was not. Indeed, beyond the guidance provided by the matrix, any other term based on the detail of the crime - which will never change would be arbitrary. See (**Biggs v. Terhune**), under **Rodriguez**, Ransom (17) years of positive institutional conduct cannot be disregarded in fact, those years must weigh more heavily than the commitment offense, particularly when the crime is not "especially heinous" or "egregious." **In re Rodriguez,** supra, 14 Cal.3d at p. 652). Absent any reasonable basis for Ransom term at anything beyond that

provided in the matrix, Ransom must be released from custody. Otherwise, the Board will be allowed the same type of unguided abuse of discretion expressly condemned in **Rodriguezs**, supra 14 Cal.3d 639.

CONCLUSION

There is no evidence supporting the Board's conclusion that Ransom committed the offense in an especially heinous, atrocious , egregious or cruel manner, or that Ransom continues to pose an unreasonable threat to public safety. Like Robert **Rosenkrantz**, Ransom has served more than sufficient time to be eligible for parole had he been convicted of first degree murder. The Board's denial of Ransom parole was, according to both state and federal law. "Otherwise arbitrary," unreasonable and unconstitutional Ransom respectfully requests that this court grant his Petition and order his release from prison forthwith.

Date: January 3, 2008

Respectfully submitted,

Darryl Ransom
(Petitioner)

IN PRO SE

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. §§ 1013(A), 2015,5)

I, **Darryl Ransom**, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Darryl Ransom, CDCR #: **E-40704**
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: **(FW-315-Up)**
SOLEDAD, CA 93960-0689.

On January 3, 2008, I served the attached:

TRAVERSE IN REPLY TO RESPONDENTS ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

United States District Court
For the Central District of California
312 N. Spring, Street.
Civil Section, Room G-8
Los Angeles, California. 90012

Department of Justice
Office of the Attorney General
110 W. "A", Street, Suite #: (1100)
P. O. Box 85266
San Diego, California. 92186-5266

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 3, 2008.

Darryl Ransom

Darryl Ransom
Declarant